

# Montana Operations Manual

## State Ethics Policy

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**Issuing Authority**

03-0180  
Department of Administration  
State Human Resources Division

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### Policy Purpose:

State of Montana employees will carry out their duties for the benefit of the people of the state. Two main principles apply to conduct: public trust and public duty. Public employment is a public trust created when the public places its confidence in the integrity of public employees.

Each state agency must adopt this model policy. State agencies may expand upon this policy with additional provisions appropriate to the specific circumstances of the agency (2-18-102(4), MCA).

### Scope:

This policy covers all employees in the executive branch except those employed by the Montana university system, the Montana State Fund, the personal staff of elected officials, and any other employees excluded from policy under 2-18-103 and -104, MCA.

Any state law or collective bargaining agreement that provides greater protection to the public supersedes this policy.

A person under contract with the state is included in the definition of public employee for the purposes of the standards of conduct statutes (2-2-103(7), MCA). Agencies must include contractors in the application of these requirements.

### Procedures:

Employees must abide by the code of ethics and standards of conduct found in 2-2-101 through 2-2-304, MCA at all times. Employees must avoid conflicts of interest between public duty and private interests, favoritism, bias, and the appearance of impropriety. The statutes must be consulted whenever an issue arises. Employees are encouraged to discuss or report any potential ethical violations with agency management before the action occurs.

#### A. Education Requirements:

The department must provide agencies with a pamphlet summarizing the State's standards of conduct. Agency management must distribute the pamphlet and the agency's ethics policy to all new employees.

Agency management must provide ethics refresher training to agency employees at least every three years. The training must require employees to read and review the standards of conduct pamphlet and the agency's ethics policy. Each employee must provide a written statement to management acknowledging the employee read the policy and agrees to abide by the policy and statutes.

**B. Conflicts of Interest:**

State employees may not engage in substantial financial transactions for the employee's private business purposes with a person whom the state employee inspects or supervises in the course of his official duties (2-2-121(2)(b), MCA).

State employees may not perform official acts directly and substantially having negative economic impacts on businesses or undertakings in competition with a business or undertaking in which the employee has a significant interest (2-2-105(5), MCA).

State employees may not acquire an interest in any business or undertaking the employee has reason to believe may directly and substantially economically benefit from official action the employee's agency is planning (2-2-105(2), MCA).

State employees may not perform an official act that will directly and substantially affecting the economic benefit of a business or other undertaking in which the employee has a substantial financial interest or is engaged as counsel, consultant, representative or agent (2-2-121(2)(e), MCA).

State employees may not participate in a proceeding when an organization of which the employee is an officer or director is: 1) involved in a proceeding before the employing agency and within the scope of the employee's job duties, or 2) attempting to influence a local, state or federal proceeding in which the employee represents the state (2-2-121(5), MCA).

State employees may not lobby on behalf of an organization of which the employee is a member while performing their public employee job duties. State employees may perform charitable fundraising activities as approved by their supervisor or authorized by law (2-2-121(6), MCA).

State employees may not, within 12 months following voluntary termination of employment, obtain employment in which the employee will take direct advantage of matters the employee was directly involved with while employed with the state. These matters are defined as rules, other than rules of general application, the employee actively helped to formulate and applications, claims, or contested cases where the employee actively participated in the decision process (2-2-105(3), MCA).

State employees may not have a majority interest in any contract made by them in their official capacity or by any agency of which they are employed if they are directly involved with the contract (2-2-201(1), MCA).

Former state employees may not, within six months of termination, contract or be employed by someone who contracts with the state involving matters with which the employee was directly involved during their employment with the state. This does not apply to contracts awarded to the low bidder based

on a competitive process or to merchandise sold to the highest bidder at public auction. This does not apply to employees if terminated because of a reduction in force (2-2-201(1) and (2), MCA).

**C. Confidential Information:**

State employees may not disclose or use confidential information acquired in the course of official duties to further substantially their personal economic interests (2-2-104(1)(a), MCA).

**D. Use of State Equipment and Resources:**

State employees may not use public time, facilities, equipment, supplies, personnel, or funds for the employee's private business purposes (2-2-121(2)(a), MCA). State employees may not use these state resources to solicit support for or opposition to a political committee, nomination or election of an individual to public office, or the passage of a ballot issue unless the use is authorized by law (2-2-121(3)(a), MCA).

**E. Collecting Fees as Compensation for Official Duties:**

State employees may not collect a fee or other form of compensation for assisting any person in obtaining a contract, claim, license, or economic benefit from the employee's agency (2-2-121(2)(c), MCA).

State employees may not assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any agency (2-2-121(2)(d), MCA).

**F. Overlapping Employment and Other Employment:**

State employees may not receive pay for two separate public employment positions that overlap for the hours being compensated. The following exceptions apply:

1. the employee reimburses the public entity from which the employee is absent for the salary paid for performing the function from which the employee is absent, or
2. the employee's salary is reduced by the amount received from the other public employer to avoid duplicate compensation for the overlapping hours; or
3. the income received is from the use of accrued leave or compensatory time during the period of overlapping employment (2-2-104(3), MCA).

Employees may not solicit or accept employment, or engage in negotiations to consider employment, with a person the employee regulates unless the employee provides written notification to the agency. Employees must report in writing such employment activity to their supervisor and the department director prior to engaging in any official duties (2-2-121(2)(f), MCA).

**G. Gifts and Offers Intended to Influence Employees' Actions:**

Employees may not accept a substantial gift or economic benefit, generally anything over \$50 in value that would tend to influence employees in the performance of their duties or employees knows is a reward for official actions. Economic benefit includes loans with an interest rate substantially

below market and compensation for private services at substantially higher than market.

Some items are excluded from the definition of gift. These items are listed below:

- any gift that is not used and is either returned or donated to a charitable organization
- food and beverages consumed when participating in a charitable, civic, or community event bearing a relationship to the employee's official capacity
- educational materials directly related to official duties
- an award presentation in recognition of public service
- educational activity that does not place the employee under obligation, serves the public good and is not lavish or extravagant (2-2-104(1)(b) and (2), MCA; 2-2-102(3), MCA).

#### **H. Policy Violations:**

Employees should disclose potential conflicts of interest to agency management prior to taking any action potentially violating this policy or the law. Agency management may take steps to avoid the conflict of interest from occurring.

Any person who believes an employee violated this policy or agency specific rules and standards of conduct may file a complaint with the commissioner of political practices. The complaint procedure with the commissioner of political practices is located in ARM 44.10.601 to .613. The employee must inform agency management of the alleged violation before filing a complaint with the commissioner.

#### **I. Disclosure Requirements:**

**Nature of Private Interest:** Public employees must disclose the nature of any private interest creating a conflict prior to acting in a manner impinging on public duty. State employees must make the disclosure in writing to the commissioner of political practices. The disclosure must include:

1. Information listing the amount of private interest, if any;
2. the purpose and duration of the services rendered, if any; and
3. the compensation received for those services or other information necessary to describe the interest.

If the state employee performs the official act involved, the employee must publicly declare the nature of the conflict for the record prior to performing the act. The declaration must contain the information contained in one, two, and three above.

**Overlapping Public Employment:** Employees must disclose overlapping employment in public positions to agency management prior to accepting employment. The Administrative Rules of Montana (44.10.601) require state public employees who receive multiple salaries from multiple public

employers for overlapping work hours, to report their employment and salaries to the commissioner of political practices.

**Requirements for Agency Directors:** Agency directors must file a business disclosure statement provided by the commissioner of political practices with the Commissioner prior to December 15 of each even-numbered year (2-2-106, MCA).

## **J. Investigation and Enforcement:**

Agency management must investigate reported or disclosed information to determine the appropriate administrative action.

Employees who violate this policy, the standards of conduct provided in 2-2-101, et al, MCA, or agency specific rules and standards of conduct may be subject to disciplinary action in accordance with the Discipline Policy (ARM 2.21.6501 et. seq.).

## **Resources:**

The State Human Resources Division publishes *Ethics: Standards of Conduct for State Employees*. The guide is available at <http://hr.mt.gov/hrpp/guides.mcp>.

The division also publishes a *Manager Fact Sheet: Political Activity of Public Officers and Employees*. The fact sheet can be found at <http://hr.mt.gov/content/hrpp/docs/Guides/PoliticalActivityFactSheet>

The Professional Development Center Teaches “*Ethical Issues in Public Service*”. <http://pdc.mt.gov/catalogb.mcp#EthIssue>

## **Definitions:**

All definitions under 2-2-101, MCA apply to this policy. The following definitions also apply.

**Business** includes a corporation, partnership, sole proprietorship, trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.

**Compensation** means any money or economic benefit conferred on or received by any person in return for services rendered or to be rendered by the person or another.